

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-06/08-277
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Office of Vermont Health Access (OVHA) denying Medicaid coverage for therapy because the therapy was not covered by the petitioner's primary insurer. The issue is whether the denial is correct under the regulations governing third party liability.

FINDINGS OF FACT

1. Petitioner brings this appeal on behalf of her nineteen year old daughter who is disabled primarily due to complex Post Traumatic Stress Disorder (PTSD) and depression. Petitioner's daughter receives Supplemental Security Income (SSI) disability as well as Social Security benefits as an adult child of a disabled person.

2. Petitioner's daughter receives Medicaid. In addition, petitioner and her husband have continued health care benefits for their daughter under their private health insurer because she was enrolled in classes.

3. Petitioner testified that it is difficult to find appropriate therapists (psychological and substance abuse) who can work as a team given her daughter's complex issues. They found a substance abuse counselor and started services on March 5, 2008.

4. The substance abuse therapist is enrolled in Medicaid but is not enrolled with petitioner's private insurer. Petitioner testified that she did not know this was the case because the substance abuse counselor did not inform them of this fact. Petitioner testified that substance abuse counseling would be covered under her private insurance if the provider was enrolled with the insurer.

5. Medicaid denied payment of the substance abuse counselor's claim because the daughter's private insurer did not cover the claim. Petitioner and her daughter learned of the denial from the substance abuse counselor on May 20, 2008 when the substance abuse counselor explained what happened with her billing. Petitioner testified that the substance abuse counselor was aware of the coverage denial for some time before she told petitioner and the daughter. The daughter stopped seeing the substance abuse counselor after May 20, 2008.

6. Petitioner requested a fair hearing on or about June 20, 2008 and a hearing was held on July 17, 2008.

ORDER

OVHA's decision to deny payment to the substance abuse therapist is affirmed.

REASONS

Medicaid is considered the payer of last resort when there are other sources of payment for medical services. 33 V.S.A. § 1908(b). The applicable regulation is M158 which states, in part:

Medicaid is the payer of last resort, after all third party medical resources have been applied. A third party is defined as one having an obligation to meet all or any portion of the medical expense incurred by the beneficiary for the time such service was delivered...Medicaid beneficiaries are required to follow all rules of their third party insurance. Medicaid will not pay claims that have been denied by the third party insurer for failure to follow their rules...

See also 42 C.F.R. § 433.139.

This case raises a conundrum. If petitioner's daughter was only covered by Medicaid, her medical costs would be covered provided the regulations allow coverage for the particular expense. Petitioner attempted to ensure comprehensive medical coverage given her daughter's

complicated medical needs by keeping her daughter on private insurance. Because the substance abuse counselor's claim could not be covered by private insurance, petitioner's daughter ends up with no coverage regarding the substance abuse counselor used by the daughter.

Although the result is harsh in this particular case, there is a sound policy basis for making Medicaid the payer of last resort. Medicaid is targeted to the neediest. To conserve funds to better meet the needs of those enrolled in Medicaid, Congress intended that other sources first be used to pay for medical claims whether the other source was public such as Medicare or private health insurance.

Unfortunately, the substance abuse counselor and petitioner did not look into insurance coverage issues at the beginning of treatment so that petitioner and her daughter could decide whether to proceed with the substance abuse counselor knowing that Medicaid would not cover the costs.

OVHA properly applied the policy and regulations in denying coverage as the particular health care provider could not be compensated through petitioner's private insurer. OVHA's decision to deny Medicaid coverage to the substance abuse counselor is affirmed.

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